



– adding to your ministry

The Committee Secretary
Standing Committee on Economics,
PO Box 6021,
CANBERRA ACT 2600

20 July 2012

Dear Sir. Madam,

Re: ACNC DRAFT BILL

Add-Ministry Inc. presents the united comments regarding the ACNC Review of Governance on behalf of the several Western Australian Christian denominations and the independent Churches whom we are authorised to represent

In our earlier seven submissions as a group we have attached letters from each church body to confirm our authority. This was preceded by a draft response being distributed and a group meeting of these bodies to discuss and confirm. In this current instance, the very short time available for responses has prevented this. We however confirm that we have circulated the submission on Wednesday 18 July and have received e-mail or 'phone confirmations of support in principle. This was all we could accomplish in the very short time available.

Add-Ministry Inc. exists to help equip and inform the charitable sector and because it shares the concerns now expressed it has been requested to coordinate this submission. Our involvement as an organisation is across the whole spectrum of the charitable sector including a large number of independent churches and also many charities that do not have a religious background.

In this submission we speak for the –

- Apostolic Church Australia,
- Australian Christian Churches (formerly Assemblies of God in WA),
- Baptist Churches of Western Australia,
- Catholic Archdiocese of Perth,
- C3 Church Australia (formerly Christian City Churches),
- Churches of Christ in WA Inc.,

- Church of the Foursquare Gospel,
- Churchlands Christian Fellowship Inc.
- Indonesian Family Church Inc.
- IPHC Ministries (Australia) Pty Ltd,
- Riverview Church
- Uniting Church in Australia Synod of WA.
- Victory Life Centre and associated Churches, and
- Westminster Presbyterian Churches of WA.
- This submission has support in principle of the Anglican Diocese of Perth who however may also be a party to a submission by the Anglican Church at a national level.

This submission is not only on behalf of the denominations that are signatories but also on behalf of over 800 member churches, which represent significantly in excess of 150,000 regular worshippers. All of these Christian communities are actively involved in charitable and philanthropic activities both within Australia and beyond its shores, motivated by their Christian religious values and commitment.

It is worth noting that the Christian Churches in Australia provide the highest volunteer input in the whole of society, extending into most areas of secular not-for-profit activity. The collective religious and community activities of the churches include the participation of a much wider group within the community through our youth, seniors and specific philanthropic activities.

COMMENTS:

1. The revised draft of the Bill to introduce the Australian Charities and Not For Profits Commission (ACNC) is a welcome improvement on the earlier poorly drafted document but still has a number of areas of concern to the Charities Sector. Nevertheless what we now have still appears to be a document that is designed to tightly control the Charity Sector with a plethora of regulatory obligations.

The Charity Sector gives to all Australians a sense of community and care which has given us the freedom to voluntarily embrace working together to contribute to the well-being of Australian society. The original basis of the ACNC as proposed seemed fair and reasonable, but now we have a legal document full of red tape and inflexible regulation to show us what we must do, or risk being penalised.

This is a complete reversal of the original intent and we submit it will be to the great detriment of our society if BEFORE a charity can contribute to the community in any useful way it must first ensure that every “i” is dotted and every “t” is crossed.

What we seek is an ACNC that operates in a manner consistent with the original commitment of our Government to reduce the red tape, to provide a one-stop-shop for reporting, and to provide education and support to assist us in our community activities.

To be more explicit, the draft Bill speaks more about the control features, being Enforcement, Regulatory Powers, Penalties and Offences than about any other theme. Only one third of the Bill relates to the area of normal operations such as Registration, Reporting, and Record Keeping matters. There is nothing at all about Education – unless the Enforcement provisions are deemed to be educational but in an unjustly harsh sense. The Explanatory Material (EM) has a chapter headed “Education, Compliance & Enforcement” but the whole Chapter relates to

Government enforcement powers – and the word “education” in the Title is quite misleading. Within the Chapter it is used only in a controlling sense, not about the provision of assistance and support – yet this was a key part of the Government’s promise.

2. It is notable that the new draft of the Bill says even less about education than its predecessor. The December 2011 draft Bill stated, in Section 2-5 (2) (a) (i) “promote...including through the provision of educational information...” in its Objects clause. The new draft Bill has removed reference to education altogether. Yet the then Assistant Treasurer (Bill Shorten) stated, in Media Release 167, paragraph 6 “An education role for the NFP Sector will be a core function of the ACNC and is an inherent power of the regulator”. There have been other clear statements of a similar nature made subsequently. There now appears to be a different and inconsistent approach and this is most concerning.

3. The omissions in the Bill remain a concern. The governance and financial reporting issues are now proposed to be introduced through regulation. The earlier discussion papers had serious flaws which indicated the complete lack of comprehension by Treasury of the impact of these matters on the Sector. The proposal to introduce these material matters through regulation does not inspire confidence, primarily due to the haste in which it has been prepared without adequate public consultation. It would be our strong preference for these matters to be introduced through legislation after a significant period of public consultation. The Sector needs to be sure that what is proposed is workable. Government may have an aim of public accountability for the Charity Sector, but we likewise have the same requirement on the Government. The problems in the preliminary consultations have not been resolved but have left the sector with a serious concern about the Government’s objectives.

4. The lack of understanding of the small Tier 1 and Tier 2 charities and their need to present financial reports that are capable of being understood by their Members is also a significant concern. To impose Australian Accounting Standards, as an obligation on Tier 2 regardless of the wishes of Members is not, we submit, helpful but instead is burdensome and costly. Although the application of Special Purpose Financial Reports does currently provide some flexibility, what is often needed is a very simple format in reporting. For Tier 2 this should retain the key elements of double entry accrual accounting with Tier 1 free to follow a simpler reporting structure. In our earlier submission we recommended increasing the number of tiers thus giving the potential for much simpler financial reporting with smaller charities. We re-affirm this recommendation.

5. The obligation to operate on the basis of a 30 June financial year unless a special application has been made, which will in many instances be refused, appears to us to be an unworkable position. As previously argued there are serious problems with this objective, including –

- The disruption with an entity’s normal reporting cycle, particular with schools and sporting clubs.
- The inability of the accounting profession to cope with the extra audit workload. There are two issues here,
 - (a) the need for Tier 2 and 3 to comply with audit or review. It is virtually impossible to obtain an honorary auditor as few honorary auditors would hold the requisite Practising Certificate or Registered Company Auditor registration, and
 - (b) the fact that the profession is already struggling with a workload that becomes more onerous annually.

- The additional, unnecessary workload on the ACNC personnel in handling applications for an alternative accounting period. It is obvious there will be a flood of such applications.
- Under ATO procedures a Substituted Accounting Period (SAP) is structured to favour commercial considerations. We submit that the adoption of these procedures, as seems likely, will be detrimental to the Charity Sector.

6. The introduction of the category of a “basic religious charity” is welcomed, as it is a step towards easing the burden on religious institutions. However the definition in Section 205-35 is only proposing eligibility for unincorporated churches and similar bodies who do not receive any grant funding. Also the Christian community has a significant concern about any legislation that seeks to give Government the authority, however remote, to remove a religious practitioner from his or her ministry role. This would be the position for those churches that do not meet the current definition.

We advocate –

- A provision in the Bill that will prevent action being taken to remove a religious practitioner from his/her ministry role except where it can be established beyond any doubt that the religious practitioner was personally responsible for a major breach in the law. An alternative could be a direction by the Commissioner to the charity to replace the person concerned.
- Removal of the reference to receipt of a grant. The occasional receipt of minor funding that is to further a church’s community activities should not, in itself, give rise to any conflict of interest or other concern.
- Removal of reference to Corporations Act and the various State Associations Acts, and replacing it with reference to Tier 3 only.
- Removal of the reference to another subtype of “charity”. It would be a common situation where a church extends its activities to include in particular, subtype 1, “relief of poverty, sickness or the needs of the aged”; and subtype 4 “other purposes beneficial to the community”. Our churches are actively involved in the wider life of our community. This involvement needs to be encouraged.
- We are also puzzled by the exclusion from this special new category of a church that is reporting on a group basis. See our other comments regarding groups below.

7. In our view the Collective and Joint reporting provisions of Section 60-95 and following sections are so hemmed in with restrictions as to be of limited practical benefit. We suggest this is a good objective that needs simplifying. A large church may have related entities that comprise a PBI, a Choral Society registered with ROCO, and a Bible School. The church may also have a DGR Building Fund. All of these activities relate to an extension of the church’s activities. They have different taxation characteristics, however the Bill provides they cannot report as a group. If they wish to report as a reporting group through consolidation of their accounts, as may be necessary for Australian Accounting Standards purposes, we suggest group reporting may well be beneficial. The tax law reason for banning the group activity is not at all clear.

8. The provisions in Section 25-5 for Entitlement to Register include, at subtype 7, the Extension of Charitable Purpose Act. However the sub-section deliberately excludes self-help groups, contemplative religious orders and the rental affordability scheme, which were a specific part of that Act. It may be argued that some of these omissions (but not the contemplative religious orders) may now be covered by the widening of the sub-types from four to seven. We

consider that all of these earlier provisions should be included, not just the provision of Section 4 of that Act, to remove any doubt.

9. The EM on page 4, second last paragraph, refers to “huge” savings that would be achieved by the Sector. Savings would not be achieved by any Tier 1 entities and by very few Tier 2 entities. The establishment of the ACNC will clearly add to the costs for most charities. It is quite misleading to suggest that there will be a significant cost-saving benefit, except to some of the Tier 3 entities.

10. There is a legal problem arising from the requirement that some charities and all Public Ancillary Funds (PAF) need to be constitutional corporations. Very few charities will meet the specific requirements of paragraph 51 (xx) of the Australian Constitution. Specifically, they cannot be financial corporations, and very few would qualify as trading corporations. There is already a drafting error with the PAF legislation in this area, where the EM made a provision, which provided a potential solution, but this was not carried through to the PAF legislation itself. It would be our hope that this is not repeated here. There is a need for legislative certainty.

11. The Bill, at Section 40-5 (f) specifies that warnings and other misdemeanours arising under the Act and the charity’s responses are all to be placed on the Public Register. This is not in the public interest. Minor matters will occur on a number of occasions with individual charities where the only reasons are stress and confusion on the part of voluntary staff. Publishing such matters for all to see will have a very negative impact on volunteers, and ultimately charities will lose volunteer support and be unable to function. It may appear to be a good idea for Government, but we can assure you the negative impact on community organisations and volunteerism will be major. Such actions will be harmful and not helpful to community life as many charities rely heavily on volunteer staff. Government need to keep in mind the fact that by far the majority of Charities and other NFP entities will be Tier 1, who rely totally or predominantly on volunteers.

12. There are a small number of instances where there appears to be an inconsistency between the EM and the Bill itself. We can provide more detail in respect to the items we have noted if that would be of assistance.

Your attention to the matters raised in this submission before the final document is presented to the Parliament would be appreciated by us.

Yours faithfully,

N E HARDING

Chairman

ADD-MINISTRY INC.